

94TH CONGRESS  
1ST SESSION

# S. 743

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 19, 1975

Mr. NELSON (for himself and Mr. KENNEDY) introduced the following bill;  
which was read twice and referred to the Committee on the Judiciary

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## A BILL

To establish administrative practices, procedures, and standards under which court authorization must be obtained for any electronic surveillance conducted on grounds of national security or on any other ground, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*  
3 That this Act may be cited as the "National Security Sur-  
4 veillance Act of 1975".

5 SEC. 2. The Congress hereby finds and declares that:

6 (a) The conduct of electronic surveillance on grounds  
7 of national security has resulted in serious abuses and is  
8 subject to further abuse by persons acting under color of law.

9 (b) There are no adequate administrative, legislative,

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1 or judicial controls to govern the conduct of electronic sur-  
2 veillance on grounds of national security.

3 (c) Electronic surveillance conducted on grounds of na-  
4 tional security and undertaken without court authorization  
5 violates the constitutional rights guaranteed to American citi-  
6 zens and foreigners in this country under the first, fourth,  
7 fifth, sixth, and ninth amendments to the Constitution of the  
8 United States.

9 (d) Electronic surveillance conducted on grounds of  
10 national security and undertaken without court authorization  
11 constitutes an unreasonable search and seizure and in any  
12 event should not take place.

13 (e) The ability of the President to fulfill any consti-  
14 tutional duties to protect the United States against foreign  
15 attack or other hostile acts of foreign powers or to conduct  
16 the foreign relations of the United States would not be  
17 hampered by a requirement of prior court authorization for  
18 any electronic surveillance undertaken on grounds of national  
19 security.

20 (f) It is the purpose of this Act to establish adminis-  
21 trative practices, procedures, and standards under which  
22 prior court authorization must be obtained for any electronic  
23 surveillance conducted on grounds of national security or on  
24 any other ground.

1 Code, is amended by deleting after "Code;" the following:  
2 "and".

3 (b) Section 2510 (11) of title 18, United States Code,  
4 is amended by deleting after "directed" the period (".")  
5 and adding the following: ";".

6 (c) Section 2510 of title 18, United States Code is  
7 amended by adding after subsection (11) thereof the follow-  
8 ing new subsections:

9 "(12) 'foreign agent' means any person who is not  
10 an American citizen or an alien lawfully admitted for  
11 permanent residence within the United States, and whose  
12 activities are intended to serve the interest of a foreign  
13 power and to undermine the military security or na-  
14 tional defense of the United States;

15 "(13) 'foreign power' means a foreign principal  
16 as defined by subsection (b) (1) of the first section of  
17 the Foreign Agents Registration Act of 1938; and

18 "(14) 'target' means the individual or party whose  
19 wire or oral communications are sought to be or have  
20 been intercepted."

21 SEC. 4. (a) Section 2511 (2) (a) (ii) of title 18, United  
22 States Code, is amended by deleting the period at the end  
23 thereof and inserting the following: ": *Provided*, That ex-  
24 cept as provided for in section 2518 (7) and section 2518A

25 (10), a communication common carrier shall not install or

1 assist in the installation of any device or mechanism to in-  
2 tercept a wire or oral communication, or otherwise allow its  
3 employees, facilities or resources to be used to assist in the  
4 interception of a wire or oral communication, unless the  
5 Government officer requesting such installation or assistance  
6 provides a true and accurate copy of a court order authorizing  
7 the interception requested. Nor shall any communication  
8 common carrier assist in or allow the use of its employees,  
9 facilities or resources for the interception of wire or oral com-  
10 munications beyond the date authorized in the court order,  
11 unless it receives from an appropriate Government officer  
12 a true and accurate copy of a court order extending the time  
13 period during which such interception is authorized. In cases  
14 involving application of section 2518 (7) and 2518A (10),  
15 the common carrier shall not assist in or allow the use of its  
16 employees, facilities, or resources for the interception of any  
17 wire or oral communication unless it receives from an appro-  
18 priate Government officer a true and accurate copy of the  
19 President's written authorization for such interception and  
20 such interception shall not be continued for more than forty-  
21 eight hours unless the carrier receives a true and accurate  
22 copy of a court order authorizing the continuation of such  
23 interception: *Provided further*, That every communication  
24 common carrier shall maintain complete and accurate records

1 the carrier or any one or more of its employees, officers or  
2 agents assists or is requested to assist in any way. Such  
3 records shall include—

4 “(i) the name of the Government officer requesting  
5 the assistance of the common carrier or the use of its  
6 employees, facilities or resources,

7 “(ii) the name of the judge and the location of the  
8 court authorizing the interception,

9 “(iii) the dates for which the interception was au-  
10 thorized, and

11 “(iv) the dates during which the interception  
12 occurred.”.

13 (b) Section 2511 (2) (a) is amended by adding after  
14 paragraph (ii) thereof the following new paragraphs:

15 “(iii) Any willful violation of this section by a com-  
16 munication common carrier or one of its employees shall  
17 render the carrier liable for the civil damages provided  
18 for in section 2520 (2) of this chapter.

19 “(iv) Upon learning of any violation of this section,  
20 the communication common carrier shall notify those in-  
21 dividuals whose wire or oral communications have been  
22 wrongfully intercepted and the Attorney General of the  
23 United States of the facts known to it concerning the  
24 violation.”.

1        SEC. 5. Section 2511 (3) of title 18, United States Code,  
2 is repealed.

3        SEC. 6. Subsection (a) of section 2516 of title 18,  
4 United States Code, is repealed.

5        SEC. 7. Chapter 119 of title 18, United States Code,  
6 is amended by adding immediately after section 2516 there-  
7 of the following new section:

8        **“§ 2516A. Authorization for interception of wire or oral**  
9                                **communications relating to military security**  
10                              **or national defense**

11        “(1) The Attorney General, or any Assistant Attorney  
12 General specially designated by the Attorney General, may  
13 authorize an application to a Federal judge of competent  
14 jurisdiction for, and such judge may grant, in conformity  
15 with section 2518A of this chapter, an order authorizing  
16 or approving the interception of wire or oral communications  
17 by the Federal Bureau of Investigation, or any Federal de-  
18 partment, agency, or other unit having lawful responsibility  
19 for the investigation of the offense as to which application is  
20 made, when—

21        “(a) there is probable cause to believe that the  
22 target has committed or is about to commit an offense  
23 punishable by death or by imprisonment for more than  
24 one year under—

1           “(i) sections 2274 through 2277 of title 42 of  
2           the United States Code (relating to enforcement of  
3           the Atomic Energy Act of 1954), or

4           “(ii) one of the following chapters of this title:  
5           Chapter 37 (relating to espionage), Chapter 105  
6           (relating to sabotage), and chapter 115 (relating  
7           to treason) ; and

8           “(b) such interception will probably provide or  
9           has provided evidence concerning the commission of  
10          that offense.

11          “(2) Notwithstanding section (1) above, the President  
12          may, in advance and in writing, authorize the Attorney Gen-  
13          eral to make an application to a judge of the United States  
14          District Court for the District of Columbia designated pur-  
15          suant to section 2518A (1) (b) of this chapter for, and such  
16          judge may grant in conformity with section 2518A of this  
17          chapter, an order authorizing or approving the interception  
18          of wire or oral communications by the Federal Bureau of  
19          Investigation when such interception will not be inconsistent  
20          with the international obligations of the United States and  
21          when—

22               “(a) there is probable cause to believe that the  
23          target is a foreign agent or a foreign power; and

1           “(b) there is probable cause to believe that such  
2 interception is necessary—

3           “(i) to obtain information which is necessary to  
4 protect the Nation against an actual or potential  
5 attack or other hostile act of a foreign power,

6           “(ii) to obtain foreign intelligence information  
7 that is essential to the military security or national  
8 defense of the United States, or

9           “(iii) to obtain information which is necessary  
10 to prevent the disclosure of information that is  
11 essential to the military security or national defense  
12 of the United States to a foreign agent or a foreign  
13 power.

14       Authorization of each application to a judge provided  
15 for in this section shall be made by the President person-  
16 ally and shall not be delegated.”.

17       SEC. 8. Chapter 119 of title 18, United States Code,  
18 is amended by inserting immediately after section 2518  
19 thereof the following new section:

20       **“§ 2518A. Procedure for interception of wire or oral com-**  
21               **munications relating to military security or**  
22               **national defense**

23       “(1) (a) Each application for an order authorizing or  
24 approving the interception of a wire or oral communication



1 made pursuant to section 2516A of this chapter shall be made  
2 in writing upon oath or affirmation and shall state the ap-  
3 plicant's authority to make such application. In cases involv-  
4 ing section 2516A (1), the application shall be made to a  
5 federal judge of competent jurisdiction. In cases involving  
6 section 2516A (2), the application shall be made to a judge  
7 of the United States District Court for the District of  
8 Columbia who shall be selected according to the procedures  
9 required by subsection (1) (b) of this section.

10 “(b) The United States District Court for the District  
11 of Columbia shall designate three judges of that court, each  
12 of whom shall be authorized to hear applications for an order  
13 authorizing or approving the interception of wire or oral  
14 communications made pursuant to section 2516A (2) of  
15 this chapter. The United States District Court for the District  
16 of Columbia shall establish procedures according to which  
17 each such application shall be heard by one of the three  
18 designated judges, chosen on a random basis and without  
19 advance notice to the applicant. Such procedures shall include  
20 provision for selecting an alternate judge at random from  
21 among the three designated judges if the judge originally  
22 selected according to the procedures is unavailable.

23 “(2) Each application made pursuant to subsection (1)  
24 (a) of this section shall include the following information:

1           “(a) the identity of the investigative or law enforce-  
2           ment officer making the application, and the officer  
3           authorizing the application;

4           “(b) a full and complete statement of the facts and  
5           circumstances relied upon by the applicant supporting  
6           his belief that an order should be issued, including—

7                   “(i) a particular description of the nature and  
8                   location of the facilities from which or the place  
9                   where the communication is to be intercepted,

10                   “(ii) a description, with as much particularity  
11                   as is possible and practicable, of the communications  
12                   sought to be intercepted, and

13                   “(iii) the identity of the target, if known;

14           “(c) in cases involving section 2516A (1), details  
15           as to the particular offense that has been, is being, or is  
16           about to be committed;

17           “(d) in cases involving section 2516A (2) —

18                   “(i) a full and complete description of the facts  
19                   and circumstances supporting the applicant's belief  
20                   that that target is a foreign agent or a foreign power,

21                   “(ii) a full and complete description of the  
22                   particular activity that has been conducted, is being  
23                   conducted, or will be conducted by the target which  
24                   necessitates the interception of wire or oral commu-

1           “(iii) a true and accurate copy of the written  
2           authorization of the President of the United States;

3           “(c) a full and complete description, with as much  
4           particularity as possible, of the communications likely  
5           to be intercepted which are not of the type sought to  
6           be intercepted, and a full and complete statement of the  
7           procedures that will be taken to ensure that such com-  
8           munications will be intercepted, disclosed, and dissemi-  
9           nated only to the minimum degree possible and prac-  
10          ticable;

11          “(f) a full and complete statement as to whether  
12          or not other investigative procedures have been tried  
13          and failed or why they appear to be unlikely to succeed  
14          if tried or to be too dangerous;

15          “(g) a statement of the period of time for which  
16          the interception is required to be maintained. If the  
17          nature of the investigation is such that the authorization  
18          for interception should not automatically terminate when  
19          the described communications have been first obtained,  
20          a particular description of facts establishing probable  
21          cause to believe that additional communications of the  
22          type sought will occur thereafter;

23          “(h) a full and complete statement of the facts  
24          concerning all previous applications known to the indi-

1 any judge for authorization to intercept, or for approval  
2 of interceptions of, wire or oral communications involving  
3 any of the same persons, facilities, or places specified in  
4 the application, and the action taken by the judge on  
5 each such application;

6 “(i) a full and complete statement of the reasons  
7 supporting the applicant's belief that an order authorizing  
8 or approving the interception of wire or oral communica-  
9 tions will not be inconsistent with the international  
10 obligations of the United States; and

11 “(j) where the application is for the extension of  
12 an order, a full and complete statement setting forth—

13 “(i) the information and results thus far ob-  
14 tained from the interception;

15 “(ii) the practices and procedures taken to  
16 minimize the interception and the disclosure or dis-  
17 semination of communications not of the type au-  
18 thorized or approved to be intercepted;

19 “(iii) the communications not of the type au-  
20 thorized or approved to be intercepted that were  
21 intercepted and the persons and parties to whom  
22 such communications were disclosed or disseminated;

23 “(iv) the specific facts and circumstances relied  
24 upon by the applicant supporting his belief that a

1           period of time will yield information of the type  
2           sought to be obtained in the original application;  
3           and

4           “(v) if the interception has not yielded signif-  
5           icant information of the type authorized or approved,  
6           the particular reasons why it has not yielded such  
7           information.

8           “(3) The judge may require the applicant to furnish  
9           additional testimony or documentary evidence in support  
10          of the application. But in no event may authorization or  
11          approval of any wire or oral communication be granted  
12          under this section unless the applicant furnishes evidence,  
13          independent of his and others' conclusory opinion, that such  
14          interception will serve one of the purposes set forth in  
15          section 2516A of this chapter.

16          “(4) Upon such application the judge may enter an  
17          ex parte order, as requested or as modified, authorizing or  
18          approving interception of wire or oral communications within  
19          the territorial jurisdiction of the court in which the judge  
20          is sitting, or, in cases involving section 2516A (2) when  
21          application has been made to a judge of the United States  
22          District Court for the District of Columbia under the pro-  
23          cedures specified in subsection (1) (b) of this section, any-  
24          where within the territorial jurisdiction of the United States,  
25          if the judge determines on the basis of the facts submitted  
26          by the applicant that—

1           “(a) there is probable cause for belief that such  
2 interception is necessary to obtain information serving  
3 one of the purposes set forth in section 2516A of this  
4 chapter;

5           “(b) there is probable cause for belief that particu-  
6 lar communications yielding information serving one of  
7 the purposes set forth in section 2516A of this chapter  
8 will be obtained through such interception;

9           “(c) normal investigative procedures have been  
10 tried and have failed or appear to be unlikely to succeed  
11 if tried or to be too dangerous;

12           “(d) there is probable cause for belief that the  
13 facilities from which, or the place where, the wire or  
14 oral communications are to be intercepted are being used  
15 or are about to be used by the target;

16           “(e) specified procedures will be followed, and, in  
17 cases involving application for an extension of an order,  
18 have been followed, to ensure that wire or oral com-  
19 munications which are not of the type authorized or  
20 approved to be intercepted will be intercepted, disclosed,  
21 and disseminated only to the minimum degree possible  
22 and practicable;

23           “(f) such interception will not be inconsistent with  
24 the international obligations of the United States; and

1           “(i) the President has provided written au-  
2           thorization for the interception, and

3           “(ii) the target is a foreign agent or a foreign  
4           power.

5           “(5) Each order authorizing or approving the intercep-  
6           tion of any wire or oral communication shall specify—

7           “(a) the identity of the target, if known;

8           “(b) the nature and location of the communications  
9           facilities as to which, or the place where, authority to  
10          intercept is granted;

11          “(c) a description, with as much particularity as is  
12          possible and practicable, of the type of communication  
13          authorized or approved to be intercepted;

14          “(d) the identity of the person authorizing the  
15          application;

16          “(e) the period of time during which such intercep-  
17          tion is authorized, including a statement as to whether  
18          or not the interception shall automatically terminate  
19          when the described communication has been first ob-  
20          tained; and

21          “(f) a particular description of the procedures to be  
22          followed to insure that the interception of communica-  
23          tions not of the type authorized or approved to be inter-  
24          cepted, and the disclosure or dissemination of such com-  
25          munications, will be minimized as much as is possible and  
26          practicable.

1       “(6) No order entered under this section may authorize  
2 or approve the interception of any wire or oral communica-  
3 tion for any period longer than is necessary to achieve the  
4 objective of the authorization, nor in any event longer than  
5 fifteen days. Extensions of an order may be granted, but  
6 only upon application for an extension made in accordance  
7 with subsection (2) of this section and upon the court’s  
8 making anew the findings required by subsection (4) of this  
9 section. In making this new finding under subsection (4),  
10 the judge shall, in cases involving section 2516A (1) of this  
11 chapter, require the applicant to furnish additional evidence  
12 independent of that relied upon in granting the initial order  
13 and which, standing alone, would satisfy the requirements  
14 of subsection (4). The period of extension shall be no longer  
15 than the authorizing judge deems necessary to achieve the  
16 purposes for which it was granted and in no event for longer  
17 than fifteen days. Every order and extension thereof shall  
18 contain a provision that the authorization to intercept shall  
19 be executed as soon as practicable, shall be conducted in such  
20 a way as to minimize the interception of communications not  
21 otherwise subject to interception under this chapter, and must  
22 terminate upon attainment of the authorized objective, or in  
23 any event within fifteen days.

24       “(7) If the court has previously denied an application  
25 made pursuant to section 2516A of this chapter for an order  
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1 or an extension of an order authorizing or approving the  
2 interception of wire or oral communications, the court may  
3 not enter an order directed against the same target in  
4 response to a subsequent application made pursuant to sec-  
5 tion 2516A of this chapter unless, in addition to the other  
6 requirements of this section, the court makes a specific find-  
7 ing that significant new information in support of the appli-  
8 cation, which was unknown or unavailable to the applicant  
9 at the time the previous application was made, in contained  
10 in the application.

11 “(8) Whenever an order authorizing interception is  
12 entered pursuant to this chapter, the order may require  
13 reports to be made to the judge who issued the order showing  
14 what progress has been made toward achievement of the  
15 authorized objective and the need for continued interception.  
16 Such reports shall be made at such intervals as the judge  
17 may require.

18 “(9) The contents of any wire or oral communication  
19 intercepted by any means authorized by section 2518A shall  
20 be subject to the requirements of paragraphs (a) and (c)  
21 of section 2518 (8) of this chapter. Applications made under  
22 section 2516A of this chapter and orders granted under this  
23 section shall be sealed by the judge, and custody of them  
24 shall be wherever the judge directs. They shall not be

1       “(10) Notwithstanding any other provision of this  
2 chapter, if the President determines that—

3       “(a) an emergency situation exists—

4       “(i) with respect to activities of a foreign  
5 power or a foreign agent which pose a substantial  
6 threat to the military security or national defense  
7 of the United States, or

8       “(ii) with respect to criminal activities involv-  
9 ing one of the offenses specified in section 2516A

10       (1) (a) which pose a substantial threat to the mili-  
11 tary security or national defense of the United  
12 States,

13       “(b) such activities require a wire or oral com-  
14 munication to be intercepted before an order authorizing  
15 such interception can with due diligence be obtained, and

16       “(c) there is good reason to believe that an order  
17 could reasonably be entered under sections 2516A and  
18 2518A of this chapter to authorize such interception,

19 the President may in advance and in writing authorize the  
20 interception of such wire or oral communication by the Fed-  
21 eral Bureau of Investigation if an application for an order  
22 approving the interception is made in accordance with this  
23 section and section 2516A of this chapter as soon as possible  
24 and in any event within forty-eight hours after the President

25 authorizes the interception. Any such authorization to inter-  
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cept shall be made by the President personally and shall not be delegated. In the absence of an order, such interception shall immediately terminate when the communication sought is obtained or when the application for the order is denied, whichever is earlier. In the event such application for approval is denied, or in any other case where the interception is terminated without an order having been issued, the contents of any wire or oral communication intercepted shall be treated as having been obtained in violation of this chapter, and an inventory shall be served as provided for in subsection (11) of this section on the target and on all identifiable persons and parties whose communications were intercepted.

“(11) Notwithstanding any other provision of this chapter, within a reasonable time but not later than thirty days after the filing of an application for an order of approval under section 2518A (10) of this chapter which is denied or the termination of the period of an order entered under this section or extensions thereof, the issuing or denying judge shall cause to be served, on the target and on all identifiable persons and parties whose communications were intercepted, an inventory which shall include notice of—

“(a) the fact of the entry of the order or the application;

1           “(b) the date of the entry and the period of au-  
2           thorized, approved, or disapproved interception, or the  
3           denial of the application; and

4           “(c) the fact that during the period wire or oral  
5           communications of such person were or were not inter-  
6           cepted.

7           The judge, upon the filing of a motion, shall make available  
8           to such person or his counsel for inspection a copy of each  
9           court order, extension, and application under which such  
10          interception was authorized or approved, and a complete and  
11          accurate transcript or other record of the intercepted com-  
12          munications of such person and other parties to such com-  
13          munications: *Provided*, That upon application of the At-  
14          torney General, the judge who authorized or approved the  
15          interception may postpone the filing of an inventory and  
16          the disclosure of such interception for thirty days if the judge  
17          makes specific findings based upon specific facts—

18          “(a) that the target is engaged in a continuing  
19          criminal enterprise and there is probable cause to be-  
20          lieve that disclosure of the interception—

21          “(i) would enable the suspected individual to  
22          escape prosecution for that particular crime,

23          “(ii) would result in the destruction or un-  
24          availability of evidence relating to the commission  
25          of that particular crime, or

1           “(iii) would result in bodily harm to an indi-  
2           vidual, or

3           “(b) that disclosure of the interception will en-  
4           danger the military security or national defense of the  
5           United States.

6           The judge may grant thirty-day extensions of the delay of  
7           disclosure of the interception if, after the initial thirty days,  
8           the judge makes new findings that one of the aforementioned  
9           conditions justifying delay still exists. Any interception dis-  
10          closed pursuant to this subsection and which involves appli-  
11          cation of section 2516A (2) need not disclose any foreign  
12          power whose wire or oral communications were intended to  
13          be or were intercepted, nor those facilities at which the  
14          interception was intended to or did take place: *Provided*  
15          *further*, That, notwithstanding any other provision of this  
16          chapter, such filing of an inventory and disclosure of the  
17          interception must be made if an application for an order of  
18          approval for an interception conducted under section 2518A  
19          (10) of this chapter has been denied.

20          “(12) (a) The contents of any intercepted wire or oral  
21          communication or evidence derived therefrom shall not be  
22          received in evidence or otherwise disclosed in any trial,  
23          hearing or other proceeding in a Federal or State court unless  
24          each party, not less than ten days before the trial, hearing  
25          or proceeding, has been furnished with a copy of the court

1 order, and accompanying application, under which the inter-  
2 ception was authorized and approved.

3 “(b) Notwithstanding any other provision of this chap-  
4 ter or any other law, no part of the contents of any wire or  
5 oral communication intercepted pursuant to an order under  
6 this section granting an application made under section  
7 2516A (2) of this chapter, and no evidence derived there-  
8 from, may be received in evidence or otherwise disclosed  
9 in any trial, hearing or other proceeding in or before any  
10 court, grand jury, department, officer, agency, regulatory  
11 body, legislative committee or other legislative unit, or other  
12 authority of the United States, a State, or a political sub-  
13 division thereof, except in civil proceedings against a foreign  
14 agent or a foreign power or in proceedings pursuant to sec-  
15 tion 2520 of this chapter or pursuant to a request made under  
16 section 2519 (5) of this chapter.

17 “(13) (a) Notwithstanding any other provision of this  
18 chapter, any aggrieved person in any trial, hearing, or pro-  
19 ceeding in or before any court, grand jury, department,  
20 officer, agency, regulatory body, legislative committee or  
21 other legislative unit, or other authority of the United States,  
22 a State, or a political subdivision thereof, may move to sup-  
23 press the contents of any intercepted wire or oral communica-  
24 tion, or evidence derived therefrom, on the grounds that—

1           “(ii) the order of authorization or approval under  
2           which it was intercepted is insufficient on its face;

3           “(iii) the interception was not made in conformity  
4           with the order of authorization or approval; or

5           “(iv) section 2518A (12) (b) requires such sup-  
6           pression.

7   Such motion shall be made before the trial, hearing, or pro-  
8   ceeding unless there was no opportunity to make such  
9   motion or the person was not aware of the grounds of the  
10   motion. If the motion is granted, the contents of the inter-  
11   cepted wire or oral communication, or evidence derived  
12   therefrom, shall be treated as having been obtained in viola-  
13   tion of this chapter.

14       “(b) In addition to any other right to appeal, the  
15   United States shall have the right to appeal from an order  
16   granting a motion to suppress made under paragraph (a)  
17   of this subsection, or the denial of an application for an order  
18   of approval, if the United States attorney shall certify to  
19   the judge or other official granting such motion or denying  
20   such application that the appeal is not taken for purposes  
21   of delay. Such appeal shall be taken within thirty days after  
22   the date the order was entered and shall be prosecuted  
23   diligently.”.

24       SEC. 9. (a) Section 2519 of title 18, United States  
25   Code, is amended by inserting immediately after “section

1 2518," the following: "or section 2518A when application  
2 has been made under section 2516A (1) of this chapter,".

3 (b) Section 2519 of title 18, United States Code, is  
4 amended by inserting at the end thereof the following new  
5 subsections:

6 " (4) In January, April, July, and October of each year,  
7 the Attorney General shall report to the Committees on the  
8 Judiciary and on Foreign Relations of the Senate and the  
9 Committees on the Judiciary and on Foreign Affairs of the  
10 House of Representatives the following information with  
11 respect to interceptions of wire or oral communications made  
12 during the preceding three months pursuant to applications  
13 made under section 2516A and orders and extensions granted  
14 or denied under section 2518A of this chapter:

15 " (a) the number of such orders and such extensions  
16 applied for during the preceding three months;

17 " (b) the number of such orders and extensions  
18 granted;

19 " (c) the number of such orders and extensions  
20 denied;

21 " (d) the maximum and minimum numbers of such  
22 interceptions in place at any time during the preced-  
23 ing three months;

24 " (e) the number of such interceptions terminated

25 during the preceding three months.  
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1           “(f) the duration of all such interceptions in place  
2       on the day of the report;

3           “(g) the duration of all such interceptions termi-  
4       nated during the preceding three months;

5           “(h) the status of all interceptions made under the  
6       provisions of section 2518A (10) of this chapter during  
7       the preceding three months; and

8           “(i) the monetary costs of all such interceptions  
9       during the preceding three months.

10          “(5) The President, the Attorney General, and all de-  
11       partments, agencies and other units of the Government shall  
12       supply to any of the committees named in subsection (4) of  
13       this section or any subcommittee thereof, upon request of  
14       such committee or subcommittee, any information regarding  
15       any interception of wire or oral communications made or  
16       applied for pursuant to section 2516A or section 2518A of  
17       this chapter, within thirty days of the receipt of such request:  
18       *Provided*, That such information shall not include either—

19               “(a) the identity of the target or any other person  
20       whose wire or oral communications have been inter-  
21       cepted, or

22               “(b) the transcript of any wire or oral communica-  
23       tion intercepted, except where such committee or sub-  
24       committee concludes that the information described in

1 the justification for any interception or for any applica-  
2 tion for a court order authorizing or approving an inter-  
3 ception, or to determine whether any interception has  
4 yielded information serving one of the purposes set forth  
5 in section 2516A of this chapter.”.

6 SEC. 10. Chapter 119 of title 18, United States Code,  
7 is amended by inserting immediately after section 2520  
8 thereof the following new section:

9 **§ 2521. Standards for recordkeeping and dissemination**

10 “Notwithstanding any other provision of law, within  
11 ninety days after the effective date of this section, the At-  
12 torney General shall issue and cause to be published in the  
13 Federal Register proposed regulations concerning:

14 “(1) the maintaining of records, files, and indexes  
15 regarding wire or oral communications intercepted pur-  
16 suant to sections 2516A and 2518A of this chapter; and

17 “(2) the disclosure, distribution, or dissemination of  
18 information derived from wire or oral communications  
19 intercepted pursuant to sections 2516A and 2518A of  
20 this chapter among employees of departments and agen-  
21 cies of the Government, including—

22 “(a) to whom, by whom, and under what pro-  
23 cedures such information may be disclosed, dis-  
24 tributed, or disseminated;

1           “(c) what use may be made of such informa-  
2           tion.

3       Following public hearings, and within one hundred and  
4       eighty days after the effective date of this section, the  
5       Attorney General shall issue and cause to be published  
6       in the Federal Register regulations concerning the sub-  
7       jects described in subsections (1) and (2) of this  
8       section.”.

9       SEC. 11. (a) The analysis of chapter 119 of title 18,  
10      United States Code, is amended by inserting immediately  
11      after the item

          “2516. Authorization for interception of wire or oral communications.”

12     the following new item:

          “2516A. Authorization for interception of wire or oral communications  
            relating to military security or national defense.”.

13       (b) Such analysis is further amended by inserting im-  
14      mediately after the item

          “2518. Procedure for interception of wire or oral communications.”

15     the following new item:

          “2518A. Procedure for interception of wire or oral communications relat-  
            ing to military security or national defense.”.

16       (c) Such analysis is further amended by inserting in-  
17      mediately after the item

          “2520. Recovery of civil damages authorized.”

18     the following new item:

          “2521. Standards for recordkeeping and dissemination.”.

94TH CONGRESS  
1ST Session

**S. 743**

## **A BILL**

To establish administrative practices, procedures, and standards under which court authorization must be obtained for any electronic surveillance conducted on grounds of national security or on any other ground, and for other purposes.

By Mr. NELSON and Mr. KENNEDY

FEBRUARY 19, 1975

Read twice and referred to the Committee on the  
Judiciary

94TH CONGRESS  
1ST SESSION

# H. R. 141

## IN THE HOUSE OF REPRESENTATIVES

JANUARY 14, 1975

Mr. KASTENMEIER introduced the following bill; which was referred to the Committee on the Judiciary

## A BILL

To amend title 18, United States Code, with respect to surveillance practices and procedures.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*  
3 That this Act may be cited as the "Surveillance Practices  
4 and Procedures Act of 1975".

5 SEC. 2. Section 2510 of title 18 of the United States  
6 Code is amended—

7 (1) by striking out "and" at the end of subsection  
8 (10);

9 (2) by striking out the period at the end of sub-  
10 section (11) and inserting in lieu thereof a semicolon;  
11 and

1 (3) by inserting immediately after subsection (11)  
2 the following new subsections:

3 “(12) ‘foreign agent’ means a person who is en-  
4 gaged in activities which, in the opinion of the Attorney  
5 General, are intended to serve the interests of a foreign  
6 principal and undermine the security or national defense  
7 of the United States; and

8 “(13) ‘foreign principal’ includes—

9 “(a) a government of a foreign country and a  
10 foreign political party;

11 “(b) a person outside of the United States,  
12 unless it is established that such person is an in-  
13 dividual and a citizen of and domiciled within the  
14 United States, or that such person is not an in-  
15 dividual and is organized under or created by the  
16 laws of the United States or of any State or other  
17 place subject to the jurisdiction of the United States  
18 and has its principal place of business within the  
19 United States; and

20 “(c) a partnership, association, corporation,  
21 organization, or other combination of persons  
22 organized under the laws of or having its principal  
23 place of business in a foreign country.”.

24 SEC. 3. (a) Section 2511 of title 18 of the United States

1 (b) Section 2516 (1) (a) of such title 18 is amended—

2 (1) by inserting immediately after “(a)” the  
3 following: “the activities of a foreign agent, or of”; and

4 (2) by inserting immediately after “imprison-  
5 ment for more than one year” the following: “if there  
6 is, in the judgment of the authorizing official, probable  
7 cause to believe that the individual whose communica-  
8 tions are to be intercepted is a foreign agent, or has  
9 committed or is about to commit such offense, and if  
10 such offense is punishable”.

11 (c) Section 2518 (3) of such title 18 is amended—

12 (1) in paragraph (a), by striking out “offense  
13 enumerated” and inserting in lieu thereof “offense or  
14 activity specified”; and

15 (2) in paragraph (b), by inserting “or activity”  
16 immediately after “offense”.

17 (d) Section 2518 (4) (c) of such title 18 is amended by  
18 inserting “or activity” immediately after “offense”.

19 SEC. 4. Section 2519 of title 18, United States Code, is  
20 amended by inserting at the end thereof the following new  
21 subsections:

22 “(4) In January, April, July, and October of each  
23 year, the Attorney General shall report to the Committees  
24 on the Judiciary and on Foreign Relations of the Senate and  
25 the Committees on the Judiciary and on Foreign Affairs of

1 the House of Representatives the following information with  
2 respect to interceptions of wire or oral communications made  
3 during the preceding three months pursuant to applications  
4 made under section 2516 and orders and extensions granted  
5 or denied under section 2518 of this chapter:

6 “(a) the number of such orders and such exten-  
7 sions applied for during the preceding three months;

8 “(b) the number of such orders and extensions  
9 granted;

10 “(c) the number of such orders and extensions  
11 denied;

12 “(d) the maximum and minimum numbers of such  
13 interceptions in place at any time during the preceding  
14 three months;

15 “(e) the number of such interceptions terminated  
16 during the preceding three months;

17 “(f) the duration of all such interceptions in place  
18 on the day of the report;

19 “(g) the duration of all such interceptions termi-  
20 nated during the preceding three months;

21 “(h) the status of all interceptions made under  
22 the provisions of section 2518 of this chapter within  
23 the preceding three months; and

24 “(i) the costs of all such interceptions made during

25 the preceding three months.



1       “(5) The President, the Attorney General, and all  
2 departments and agencies of the United States shall supply  
3 to any committee named in subsection (4) of this section,  
4 upon request of such committee, any information regarding  
5 any interception of wire or oral communications made or  
6 applied for pursuant to section 2516 or section 2518 of this  
7 chapter, within thirty days after the receipt of such request.”.

94<sup>TH</sup> CONGRESS  
1<sup>ST</sup> Session

**H. R. 141**

**A BILL**

To amend title 18, United States Code, with respect to surveillance practices and procedures.

By Mr. KASTENMEIER

JANUARY 14, 1975

Referred to the Committee on the Judiciary

94TH CONGRESS  
1ST SESSION

# H. R. 214

## IN THE HOUSE OF REPRESENTATIVES

JANUARY 14, 1975

Mr. MOSHER introduced the following bill; which was referred to the Committee on the Judiciary

## A BILL

To require in all cases court orders for the interception of communications by electronic and other devices, for the entering of any residence, for the opening of any mail, for the inspection or procurement of certain records, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*  
3 That this Act may be cited as the "Bill of Rights Procedures  
4 Act of 1975".

### FINDINGS AND PURPOSES

6 SEC. 2. (a) The Congress hereby finds and declares  
7 that—

8 (1) the rights of the people of the United States  
9 under the Constitution of the United States are endan-

1       gered by interception of communications by electronic  
2       and other devices, the entry of dwellings, opening of  
3       mail, and the inspection of and procuring of the records  
4       of telephone, bank, credit, medical, or other business or  
5       private transactions of any individual when undertaken  
6       by officials, agents, or employees of the United States  
7       without a court order issued upon probable cause that a  
8       crime has been or is about to be committed, supported  
9       by oath or affirmation, and particularly describing the  
10      place to be searched, and the persons or things to be  
11      seized;

12           (2) the constitutional duty of the Congress to make  
13      the laws and to provide for the common defense, and  
14      the constitutional duty of the President to execute the  
15      laws and to command the Armed Forces and other  
16      security forces according to rules and regulations made  
17      by the Congress, would not be impeded by requiring  
18      court orders for any interception of communications by  
19      electronic and other devices, the entry of dwellings,  
20      opening of mail, or the inspection of and procuring of  
21      the records of telephone, bank, credit, medical, or other  
22      business or private transactions of any individual;

23           (3) the constitutional duty of the Congress to make  
24      laws to protect the national security of the United States

25      and the constitutional duty of the President to execute  
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1 such laws should not limit the rights of individuals un-  
2 der the Constitution of the United States. Any inter-  
3 ception of communications by electronic and other de-  
4 vices, the entry of dwellings, opening of mail, or the  
5 inspection of and procuring of the records of telephone,  
6 bank, credit, medical, or other business or private trans-  
7 actions of any individual which is undertaken on any  
8 grounds, including but not limited to, national security  
9 or foreign policy, without a court order issued upon prob-  
10 able cause that a crime has been or is about to be com-  
11 mitted, supported by oath or affirmation and particularly  
12 describing the place to be searched and the persons or  
13 things to be seized, constitutes "an unreasonable search  
14 and seizure" within the meaning of the fourth amend-  
15 ment to the Constitution of the United States.

16 (b) It is therefore the purpose of this Act to prohibit  
17 any interception of communication by electronic and other  
18 devices, surreptitious entry, mail opening, or the inspection  
19 of and procuring of the records of telephone, bank, credit,  
20 medical, or other business or private transaction of any in-  
21 dividual without a court order issued upon probable cause  
22 that a crime has been or is about to be committed, supported  
23 by oath or affirmation and particularly describing the place to  
24 be searched and the persons or things to be seized.

1 SEARCHES AND SEIZURES

2 SEC. 3. Section 2236 of title 18, United States Code, is  
3 amended to read as follows:

4 "§ 2236. Searches without warrant

5 "(a) Whoever, being an officer, agent, or employee of  
6 the United States or any department or agency thereof will-  
7 fully—

8 "(1) searches any private dwelling used and oc-  
9 cupied as a dwelling without a warrant directing such  
10 search or maliciously and without reasonable cause  
11 searches any other building or property without a search  
12 warrant;

13 "(2) procures or inspects the records of telephone  
14 calls, bank, credit, medical, or other business or private  
15 transactions of any individual without a search warrant  
16 or the consent of the individual;

17 "(3) opens any foreign or domestic mail not di-  
18 rected to him without a search warrant directing such  
19 opening or without the consent of the sender or ad-  
20 dressee of such mail in violation of section 3623 (d) of  
21 title 39; or

22 "(4) intercepts, endeavors to intercept, or procures  
23 any other person to intercept any wire or oral communi-  
24 cation except as authorized under chapter 119;

1 shall be fined not more than \$10,000 or imprisoned not more  
2 than one year, or both.

3 “(b) (1) The provisions of section (a) (1) shall not  
4 apply to any person—

5 “(A) serving a warrant of arrest;

6 “(B) arresting or attempting to arrest a person com-  
7 mitting or attempting to commit an offense in his pres-  
8 ence, or who has committed or is suspected on reasonable  
9 grounds of having committed a felony; or

10 “(C) making a search at the request or invitation  
11 or with the consent of the occupant of the premises.

12 “(2) For purposes of subsection (a) the terms ‘wire  
13 communication,’ ‘oral communication,’ and ‘intercept’ shall  
14 have the same meaning as given to such terms under chapter  
15 119.”.

16 INTERCEPTION OF WIRE OR ORAL COMMUNICATIONS

17 SEC. 4. (a) Section 2511 (1) of such title 18 is amended  
18 by striking out “Except as otherwise specifically provided in  
19 this chapter” and inserting in lieu thereof “Except as specifi-  
20 cally provided in chapter 109 in the case of any officer, agent,  
21 or employee of the United States,”.

22 (b) Sections 2511 (3), 2518 (7), and 2518 (8) (d) of  
23 such title 18 are repealed.

1 REPORTING OF INTERCEPTED COMMUNICATIONS

2 SEC. 5. (a) Section 2519 of such title 18 is amended  
3 to read as follows:

4 "§ 2519. Reports concerning intercepted wire, oral, and  
5 other communications

6 "(a) Within thirty days after the date of an order au-  
7 thorizing or approving the interception of a wire or oral com-  
8 munication (or each extension thereof) entered under section  
9 2518, or the denial of an order approving an interception, the  
10 person seeking such order shall report to the Administrative  
11 Office of the United States Courts and to the Committee on  
12 the Judiciary of the Senate and House Representatives—

13 "(1) the fact that an order or extension was applied  
14 for;

15 "(2) the kind of order or extension applied for;

16 "(3) the fact that the order or extension was  
17 granted as applied for, was modified, or was denied;

18 "(4) the period of interceptions authorized by the  
19 order, and the number and duration of any extensions of  
20 the order;

21 "(5) the names of all parties to the intercepted  
22 communications;

23 "(6) the offense specified in the order or applica-  
24 tion;



1       “(7) the identity of the investigative or law en-  
2       forcement officer and agency making the application and  
3       the person authorizing the application to be made;

4       “(8) a copy of the court order authorizing, ap-  
5       proving, or denying such interception;

6       “(9) the nature of the facilities from which or the  
7       place where communications were intercepted.

8       “(b) Within sixty days after the date of an order au-  
9       thorizing or approving the interception of a wire or oral  
10      communication (or extension thereof) entered under section  
11      2518, or the denial of an order approving an interception,  
12      the judge hearing the application for such order shall trans-  
13      mit to the Committees on the Judiciary of the Senate and  
14      House of Representatives a complete transcript of the pro-  
15      ceedings.

16      “(c) Within ninety days after the date of an order  
17      authorizing or approving the interception of a wire or oral  
18      communication (or each extension thereof) entered under  
19      section 2518, and within sixty days after the termination  
20      of any such interception, the person authorized to make such  
21      interception shall report to the Administrative Office of the  
22      United States Courts and to the Committees on the Judiciary  
23      of the Senate and House of Representatives the disposition  
24      of all records (including any logs or summaries of any such

1 interception) of any such interception and the identity of  
2 and action taken by all individuals who had access to any  
3 such interception."

4 (b) (1) Any information transmitted or submitted,  
5 pursuant to section 2519 (a) (5) of title 18, United States  
6 Code (as added by subsection (a) of this section), to the  
7 Congress or to any standing, special, or select committee of  
8 either House of Congress or to any joint committee of the two  
9 Houses of Congress shall be treated as a confidential com-  
10 munication and kept secret.

11 (2) Paragraph (1) of this subsection is enacted by the  
12 Congress—

13 (A) as an exercise of the rulemaking power of the  
14 Senate and House of Representatives, respectively, and  
15 as such shall be considered as a part of the rules of each  
16 House, respectively, or of that House to which it specifi-  
17 cally applies, and such rule shall supersede other rules  
18 only to the extent that they are inconsistent therewith,  
19 and

20 (B) with full recognition of the constitutional right  
21 of either House to change such rule (so far as it relates  
22 to the procedure in such House) at any time, in the same  
23 manner, and to the same extent as in the case of any  
24 other rule of such House.

1           REPORTING AUTHORIZATIONS TO OPEN MAIL

2           SEC. 6. Chapter 205 of such title 18 is amended by  
3 adding at the end thereof the following new section:

4           “§ 3117. Reporting requirements in the case of warrants  
5                   issued authorizing the opening of mail

6           “(a) Within thirty days after the date of issuance of a  
7 warrant to open any mail or the denial of such a warrant the  
8 person seeking such warrant shall report to the Administra-  
9 tive Office of the United States Courts and to the Committee  
10 on the Judiciary of the Senate and House of Repre-  
11 sentatives—

12           “(1) the fact that a warrant was applied for;

13           “(2) the fact that the warrant was issued as ap-  
14 plied for, was modified, or was denied;

15           “(3) the offense specified in the warrant;

16           “(4) the identity of the investigative or law en-  
17 forcement officer and the agency making the application  
18 and the person authorizing the application to be made;

19           “(5) the names of the sender and addressee of all  
20 mail opened pursuant to such warrant;

21           “(6) a copy of the approved warrant;

22           “(7) the nature of the facilities from which or the  
23 place where any such mail was opened; and

24           “(8) the disposition of all records (including any

1 log, copy, or summary) of any such mail or the contents  
2 of such mail and the identity of and action taken by all  
3 individuals who had access to any such mail.

4 “(b) Within sixty days after the date of any warrant  
5 authorizing the opening of any mail, or the denial of any  
6 such warrant, the judge hearing the application for such  
7 warrant shall transmit to the Committee on the Judiciary  
8 of the Senate and House of Representatives a complete  
9 transcript of the proceeding.”

10 TECHNICAL AMENDMENT

11 SEC. 7. The analysis of chapter 205 of such title 18  
12 is amended by adding at the end thereof the following  
13 new item:

“3117. Reporting authorizations to open mail.”

94TH CONGRESS  
1ST SESSION

**H. R. 214**

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**A BILL**

To require in all cases court orders for the interception of communications by electronic and other devices, for the entering of any residence, for the opening of any mail, for the inspection or procurement of certain records, and for other purposes.

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By Mr. MOSHER

JANUARY 14, 1975

Referred to the Committee on the Judiciary

DDI-758-75

OLC 75-0531  
14 March 1975

MEMORANDUM FOR GLC

SUBJECT: Electronic Surveillance Legislation

1. Over twenty bills have been introduced in Congress to date aimed at restricting electronic surveillance conducted on national security grounds. (Attached is a wrap-up and analysis of pending legislation in this area.) I believe that prompt Agency initiatives are required,



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Next 7 Page(s) In Document Exempt

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ROUTING AND RECORD SHEET

SUBJECT: (Optional)

FROM: Legislative Counsel  
7D49 HQ

EXTENSION

NO.

DATE

17 MAR 1975

TO: (Officer designation, room number, and building)

DATE

OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1.

DDI

RECEIVED

FORWARDED

18 MAR 1975

19 MAR

Attached are three surveillance bills now pending before the House Subcommittee on Courts, Civil Liberties, and the Administration of Justice. Also attached are memoranda relating to this legislation. Please review this material and send me whatever comments and/or reaction you may have on this subject by 24 March.

4.

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14.

15.

☐ George L. Cary  
Legislative Counsel

cc: OGC  
DDO

☐  
Henry Knoche  
DDI  
DDA  
DDS&T

SECRET